

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

DERRICK WAYNE BURTON §  
VS. § CIVIL ACTION NO. 1:05cv409  
UNITED STATES OF AMERICA §

ORDER

The court previously entered a judgment dismissing this motion to vacate, set aside or correct sentence as successive. Movant has filed a notice of appeal as well as a motion seeking a certificate of appealability. Such a certificate is required in order to appeal this court's judgment.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." *Barefoot v. Estelle*, 463 U.S. 880 (1982); *Butler v. Byrne*, 845 F.2d 501 (5th Cir. 1988). This standard means that the movant must demonstrate that the issues raised are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions are worth encouragement to proceed further. The court must either issue a certificate of appealability indicating which issues satisfy the applicable standard, or must state the reasons why such a certificate should not issue. FED. R. APP. P. 22(b).

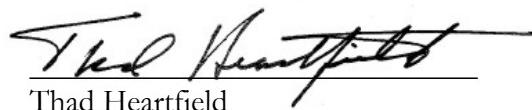
In this case, the standards for issuance of a certificate of appealability are not met. For the reasons set forth in the memorandum opinion previously entered, the court finds the issues raised by movant are not subject to debate among jurists of

reason. As a result, movant has not made a substantial showing that the dismissal of his motion to vacate resulted in the denial of a constitutional right. It is therefore

**ORDERED** that the application for a certificate of appealability is **DENIED**.

Movant has also filed a motion seeking leave to proceed *in forma pauperis* on appeal. This motion is **GRANTED**.

**SIGNED** this the 9 day of November, 2005.



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Thad Heartfield  
United States District Judge